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**REC 04/2004**

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 28-12-2004  
C(2004)5301

NOT FOR PUBLICATION

**COMMISSION DECISION**

**Of 28-12-2004**

**finding that post-clearance entry in the accounts of import duties is not justified in a particular case**

(Only the French text is authentic)

**(Request submitted by France)  
(REC 04/2004)**

FR

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**(Request submitted by France)**

**(REC 04/2004)**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code,<sup>1</sup>

Having regard to Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92,<sup>2</sup>

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<sup>1</sup> OJ L 302, 19.10.1992, p. 1. Regulation as last amended by the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded (OJ L 236, 23.9.2003, p. 33).

<sup>2</sup> OJ L 253, 11.10.1993, p. 1. Regulation as last amended by Regulation (EC) No 2286/2003 (OJ L 343, 31.12.2003, p. 1).

Whereas:

- (1) By letter dated 11 August 2004, received by the Commission on 17 August 2004, France asked the Commission to decide, under Article 220(2)(b) in conjunction with Article 236 of Regulation (EEC) No 2913/92, whether waiving the post-clearance entry of import duties in the accounts was justified in the following circumstances.
- (2) A French firm purchases goods of Chapter 61 of the Common Customs Tariff (articles of apparel and clothing accessories, knitted or crocheted). As part of this activity, between December 1994 and September 1995 the firm imported textile products into the Community from Cambodia.
- (3) Imports into the Community of this type of product originating in Cambodia qualified for preferential arrangements under the System of Generalised Preferences. Under the relevant provisions (Article 77 or Article 78, depending on the case) of the version of Regulation (EEC) No 2454/93 in force at the time, the products were eligible for preferential tariff treatment upon release for free circulation if they were covered by a Form A certificate of origin issued by the competent authorities in Cambodia.
- (4) In the case in point the firm attached to its customs declarations the relevant Form A certificates of origin issued by the competent Cambodian authorities. The French customs authorities accepted the declarations and granted preferential tariff treatment.
- (5) From 11 to 20 March 1996, as part of an administrative cooperation mission, joint investigations were carried out by representatives of the Cambodian Government, the Commission and the customs authorities of some Member States. The investigation found that a large number of certificates issued by the Cambodian authorities should not have been issued, since the rules of origin had not been complied with. The Cambodian authorities listed the certificates which they had declared invalid in Annex 1 to their letter to the Commission of 20 March 1996.
- (6) The firm used certificates which were later included in that Annex and which, therefore, were declared invalid by the competent Cambodian authorities.

- (7) Since the textile products imported into France were therefore not eligible for preferential tariff treatment, the French authorities required the firm to pay import duties of EUR XXXXX.
- (8) The company applied for non-recovery of the import duties concerned, citing its good faith and the mistakes made by the competent authorities, which it could not have detected.
- (9) In particular, the firm stated that the competent Cambodian authorities had committed an error in issuing the certificates when they knew, or should have known, that the origin conditions had not been complied with.
- (10) In accordance with Article 871(3) of Regulation (EEC) No 2454/93, the firm stated that it had seen the dossier submitted to the Commission by the French authorities and had nothing to add.
- (11) In accordance with Article 873 of Regulation (EEC) No 2454/93, a group of experts composed of representatives of all the Member States met on 19 October 2004 within the framework of the Customs Code Committee (Repayment Section) to consider the case.
- (12) Under Article 220(2)(b) of Regulation (EEC) No 2913/92, there can be no post-clearance entry in the accounts where the amount of duties legally owed failed to be entered in the accounts as a result of an error on the part of the customs authorities which could not reasonably have been detected by the person liable for payment, the latter for his part having acted in good faith and complied with all the provisions laid down by the legislation in force as regards the customs declaration.
- (13) In the case in point, the granting of preferential tariff treatment for the imports was subject to presentation of Form A origin certificates.
- (14) As already noted, the certificates concerned were declared invalid by the Cambodian authorities.
- (15) Reliance on the validity of such certificates is not normally protected, as this is considered part of the importer's normal commercial risk and therefore the responsibility of the person liable for payment.

- (16) The Court of Justice has consistently ruled that the legitimate expectations of a trader are protected only if the competent authorities themselves gave rise to the expectations.
- (17) In this instance, the exporters declared on the certificates that the goods they referred to met the conditions for obtaining the certificates.
- (18) However, as the Court has [ruled](#)<sup>3</sup>, the fact that the exporters submitted incorrect applications does not rule out the possibility that the competent authorities committed an error within the meaning of Article 220(2)(b) of Regulation (EEC) No 2913/92. The authorities' behaviour needs to be evaluated in the light of the broader context in which the relevant customs provisions were applied.
- (19) Thus the fact that the exporters confirmed on the Form A certificates that the conditions for obtaining them had been met is not in itself proof that the competent Cambodian authorities were misled. It is necessary to ascertain whether the exporters made these declarations on the assumption that the competent authorities were acquainted with all the facts necessary to apply the rules in question and whether the authorities, despite that knowledge, raised no objection to the declarations.
- (20) In the case in point, there is evidence to suggest that the competent Cambodian authorities knew or, at the very least, should have known that the goods for which they were issuing Form A certificates did not fulfil the conditions laid down for preferential treatment. In fact, in their letter of 20 March 1996 the competent authorities admitted that they had issued those certificates because they had not fully understood the technical rules for determining the origin of the goods.
- (21) The circumstances in this case therefore reveal an active error on the part of the Cambodian customs authorities themselves which could not have been detected by an operator acting in good faith within the meaning of Article 220(2)(b) of Regulation (EEC) No 2913/92.
- (22) As the Court of Justice of the European Communities has consistently ruled, when determining whether the firm could reasonably have detected the customs authorities'

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<sup>3</sup> *Ilumitrónica* judgment of 14 November 2002, Case C-251/00.

error, account must be taken of the nature of the error, the firm's professional experience and the diligence shown by it.

- (23) In the case in point, the Cambodian authorities issued Form A origin certificates for goods that did not qualify for such certificates at least throughout the period covered by the joint mission of 11 – 20 March 1996. This behaviour confirmed the legitimate expectations of the firm that the certificates issued by the authorities were valid.
- (24) Furthermore, at the time of the events, no notice asking importers to take precautions in the use of Form A certificates of origin issued for the products by the Cambodian authorities had been published in the Official Journal of the European Communities.
- (25) As regards the diligence shown by the firm, there is nothing in the dossier to indicate that the way it concluded its contracts departed from normal commercial practice. Nor was the fact that the firm procured its supplies through its purchasing department working with its purchasing offices in Singapore likely to make the firm aware of the exact origin of the raw materials used.
- (26) It must therefore be accepted that the error of the competent Cambodian authorities could not have been detected by the firm.
- (27) Moreover, the firm complied with all the provisions laid down by the legislation in force as regards the customs declaration.
- (28) Post-clearance entry in the accounts of import duties is not therefore justified in this case.
- (29) Under Article 875 of Regulation (EEC) No 2454/93, where the circumstances under consideration are such that the duties need not be entered in the accounts, the Commission may determine the conditions under which the Member States may refrain from post-clearance entry of duties in the accounts in cases involving comparable issues of fact and of law.
- (30) Cases comparable in fact and in law are those for which applications for waiver of post-clearance entry in the accounts are submitted within the legal deadline and relate to import operations for which the declarations were accompanied by Form A certificates of origin listed in Annex I to the letter from the Cambodian authorities of

20 March 1996, those operations being carried out in circumstances comparable in fact and in law to those that gave rise to this case. In such cases the firms must have acted in good faith and complied with all the provisions laid down by the legislation in force as regards the customs declaration,



HAS ADOPTED THIS DECISION:

*Article 1*

The import duties in the sum of EUR XXXXX which are the subject of the request from France of 11 August 2004 shall not be entered in the accounts.

*Article 2*

This Decision is addressed to France.

Done at Brussels, 28-12-2004

*For the Commission*

*László KOVÁCS*

*Member of the Commission*